

§ 262.5

37 CFR Ch. II (7–1–07 Edition)

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

(g) *Distribution of payments.*—(1) The Designated Agent shall distribute royalty payments directly to Copyright Owners and Performers, according to 17 U.S.C. 114(g)(2); Provided that the Designated Agent shall only be responsible for making distributions to those Copyright Owners and Performers who provide the Designated Agent with such information as is necessary to identify and pay the correct recipient of such payments. The agent shall distribute royalty payments on a basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of sound recordings by Licensees; Provided, however, Performers and Copyright Owners that authorize the Designated Agent may agree with the Designated Agent to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Parties entitled to receive payments under 17 U.S.C. 114(g)(2) may agree with the Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties consistent with the percentages in 17 U.S.C. 114(g)(2).

(2) The Designated Agent shall inform the Register of Copyrights of:

(i) Its methodology for distributing royalty payments to Copyright Owners and Performers who have not themselves authorized the Designated Agent

(hereinafter “nonmembers”), and any amendments thereto, within 60 days of adoption and no later than 30 days prior to the first distribution to Copyright Owners and Performers of any royalties distributed pursuant to that methodology;

(ii) Any written complaint that the Designated Agent receives from a nonmember concerning the distribution of royalty payments, within 60 days of receiving such written complaint; and

(iii) The final disposition by the Designated Agent of any complaint specified by paragraph (g)(2)(ii) of this section, within 60 days of such disposition.

(3) A Designated Agent may request that the Register of Copyrights provide a written opinion stating whether the Designated Agent’s methodology for distributing royalty payments to nonmembers meets the requirements of this section.

(h) *Permitted deductions.* The Designated Agent may deduct from the payments made by Licensees under § 262.3, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments under 17 U.S.C. 112(e) or 114(g) may agree to permit the Designated Agent to make any other deductions.

(i) *Retention of records.* Books and records of a Licensee and of the Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than 3 years.

§ 262.5 Confidential information.

(a) *Definition.* For purposes of this part, “Confidential Information” shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Receiving Agent or a Designated Agent are public knowledge. The Designated Agent that claims the benefit of this provision shall have the burden

of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Designated Agent use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto; Provided, however, that the Designated Agent may disclose to Copyright Owners and Performers Confidential Information provided on statements of account under this part in aggregated form, so long as Confidential Information pertaining to any individual Licensee cannot readily be identified, and the Designated Agent may disclose the identities of services that have obtained licenses under 17 U.S.C. 112(e) or 114 and whether or not such services are current in their obligations to pay minimum fees and submit statements of account (so long as the Designated Agent does not disclose the amounts paid by the Licensee).

(d) *Disclosure of Confidential Information.* Except as provided in paragraph (c) of this section and as required by law, access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Designated Agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of their work, require access to the records;

(2) An independent and qualified auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Designated Agent with respect to the verification of a Licensee's statement of account pursuant to § 262.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty payments pursuant to § 262.7;

(3) The Copyright Office, in response to inquiries concerning the operation of the Designated Agent;

(4) In connection with future Copyright Arbitration Royalty Panel proceedings under 17 U.S.C. 114(f)(2) and 112(e), and under an appropriate protec-

tive order, attorneys, consultants and other authorized agents of the parties to the proceedings, Copyright Arbitration Royalty Panels, the Copyright Office or the courts; and

(5) In connection with bona fide royalty disputes or claims that are the subject of the procedures under § 262.6 or § 262.7, and under an appropriate confidentiality agreement or protective order, the specific parties to such disputes or claims, their attorneys, consultants or other authorized agents, and/or arbitration panels or the courts to which disputes or claims may be submitted.

(e) *Safeguarding of Confidential Information.* The Designated Agent and any person identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Designated Agent or person.

§ 262.6 Verification of statements of account.

(a) *General.* This section prescribes procedures by which the Designated Agent may verify the royalty payments made by a Licensee.

(b) *Frequency of verification.* The Designated Agent may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Designated Agent must file with the Copyright Office a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the FEDERAL REGISTER a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of records.* The Licensee shall use commercially